

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

MICHAEL ARMSTRONG, )  
                          )  
Plaintiff,            )  
                          )  
v.                     )      CASE NO. 2:09-CV-139-WKW  
                          )  
JOHN CUMMINS, *et al.*, )  
                          )  
Defendants.            )

**ORDER**

On July 20, 2009, the Magistrate Judge filed a Recommendation in this case. (Recommendation (Doc. # 24).) In response to the Recommendation, Plaintiff Michael Armstrong filed a Motion to Dismiss, or in the Alternative, Motion for Judgment on the Pleadings (Doc. # 27), which is construed as objections to the Recommendation. The portions of the recommendation to which a party objects are reviewed *de novo*. 28 U.S.C. § 636(b)(1).

A *de novo* review of the record and law confirms that the Recommendation should be adopted. Accordingly, it is ORDERED that:

- (1) Armstrong's objections (Doc. # 27) are OVERRULED;
- (2) The Recommendation (Doc. # 24) is ADOPTED;
- (3) Defendants' Motion to Dismiss, or in the Alternative, Motion for Judgment on the Pleadings (Doc. # 19) is GRANTED in part and DENIED in part. It is GRANTED to the extent that all of the claims are dismissed but denied in that some of the claims are dismissed without prejudice and Armstrong is granted leave to amend his complaint;

(4) Armstrong's claims for damages pursuant to 42 U.S.C. § 1983 and § 1985, and his claims for individual liability under Title VII of the Civil Rights Act of 1964 ("Title VII") and the Americans with Disabilities Act of 1990 ("ADA") are DISMISSED with prejudice;

(5) Armstrong's remaining claims – official capacity liability under Title VII and the ADA – are DISMISSED without prejudice. Armstrong may file **on or before September 14, 2009**, an amended complaint, taking care that it complies with Rule 11(b) of the Federal Rules of Civil Procedure. Any amended complaint shall be accompanied by a motion for leave to amend, shall comply with this District's local rules for the filing of amendments,<sup>1</sup> and shall not restate claims that have been dismissed by the terms of this Order. Failure to move to amend the complaint by the date above shall result in dismissal with prejudice of the claims; and

(6) This case is REFERRED back to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) for all pretrial proceedings and entry of any orders or recommendations as may be appropriate.

DONE this 26th day of August, 2009.

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/s/ W. Keith Watkins  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> See M.D. Ala. L. R. 15.1 ("Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must, except by leave of court, reproduce the entire pleading as amended, and may not incorporate any prior pleading by reference.")